

**DEPARTMENT OF STATE****22 CFR Part 22****[Public Notice: 11649]****RIN 1400-AF48****Schedule of Fees for Consular Services – Elimination of the “Return Check Processing Fee”****AGENCY:** Department of State.**ACTION:** Final rule.

**SUMMARY:** The Department of State (the Department) is adjusting the Schedule of Fees for Consular Services (Schedule) by removing Item Number 74, a \$25 return check processing fee. Domestically, the Bureau of Consular Affairs, Office of Passport Services (CA/PPT), has charged customers this fee when the instruments they have used to submit payment for a passport application could not be processed due to insufficient funds, closed accounts, stop payments, and altered/fictitious checks or money orders. A recent review of the Department’s Cost of Service Model (CoSM) established that the costs associated with attempts to recover on non-viable instruments are now captured within the passport application fee. The Department therefore stopped charging this fee on December 13, 2021, and will remove this fee from the Schedule.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202-485-8915, email: [fees@state.gov](mailto:fees@state.gov).

**SUPPLEMENTARY INFORMATION:****Background**

This rule makes changes to the Schedule of Fees in 22 CFR 22.1 by removing Item Number

74, the \$25 return check processing fee, from the Schedule of Fees. This fee was added to the Schedule in 1991 to recoup the cost of time spent by passport office personnel attempting to recover on bad checks applicants had submitted to the Department. According to the Passport Directorate's research, in FY 1989 there were approximately 8,800 bad checks and money orders, which required an estimated 5,400 staff hours to process. This fee has only been charged domestically; overseas posts do not accept personal checks and have not charged the fee. A recent review of the Department's CoSM established that the costs associated with the return check processing fee are now captured within a portion of the passport application fee the Department already charges.

### **What Is the Authority for This Action?**

The Department of State's general authority to set and charge fees for consular services it provides derives from the user charges statute, 31 U.S.C. 9701. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) ("The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government."). Various statutes permit the Department of State to retain some of the fee revenue it collects (*e.g.,* passport security surcharge, immigrant visa security surcharge, affidavit of support, etc.), but the Department of State lacks statutory authority to retain the return check processing fee. As with many other consular fees, all collections of this fee must be deposited into the general fund of the Treasury pursuant to the Miscellaneous Receipts Statute, 31 U.S.C. 3302(b). The Department likewise does not retain the passport application fee. *See* 22 U.S.C. 214(a) ("There shall be collected and paid into the Treasury of the United States a fee, prescribed by the Secretary of State by regulation, for the filing of each application for a passport . . .").

### **Activity-Based Costing**

To set fees in accordance with the general user charges principles set forth in 31 U.S.C. 9701, the Department must calculate the true cost to the U.S. government of providing each consular

service. Following guidance provided in “Managerial Cost Accounting Concepts and Standards for the Federal Government,” OMB’s Statement #4 of Federal Accounting Standards (SFFAS #4), *available at* <http://www.fasab.gov/pdffiles/sffas-4.pdf>, the Department chose to develop its CoSM using an Activity-Based Costing (ABC) methodology to determine the true cost of each consular service.

The Government Accountability Office (GAO) defines ABC as a “set of accounting methods used to identify and describe costs and required resources for activities within processes.” Organizations can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services; therefore, ABC models seek to identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as “resource drivers” and “activity drivers.” The goal is to proportionally and accurately distribute costs. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding of an organization’s business processes. SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. Government.

The ABC approach focuses on the activities required to produce a particular service or product and uses resource drivers to assign costs through activities and activity drivers to assign costs from activities to services. In the context of the work of the Department’s Bureau of Consular Affairs (CA), resource drivers assign costs (resources including materials, supplies, and labor utilized in the production or delivery of services and products) to activities using business rules that reflect the operational reality of CA and the data available from consular systems, surveys, and internal records. Most resource drivers are based on time spent on each activity. Activity drivers assign the cost of consular activities to the services CA provides. Most activity drivers are based on volumes.

### **Why Is the Department Removing this Fee?**

Based on feedback from CA/PPT's field offices, the Department evaluated whether there was a need to charge the \$25 return check processing fee. Upon review, it was determined that the costs associated with this service are now captured in the CoSM's cashiering activity, which is accounted for in the passport application fee the Department already charges. The Department therefore no longer needs to charge the return check processing fee in order to recover the costs of providing this service.

## **REGULATORY FINDINGS**

### *Administrative Procedure Act*

As removal of this fee constitutes a benefit, this rule is published as a final rule under the authority of 5 U.S.C. 553(a)(2). Since the rule is exempt from §553, this rule is effective upon publication.

### *Regulatory Flexibility Act*

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

### *Unfunded Mandates Act of 1995*

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501–1504.

### *Congressional Review Act*

This rule is a not major rule as defined by 5 U.S.C. 804(2).

### *Executive Order 12866*

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order and affirms that this regulation is consistent with the guidance therein. The Office of Management and Budget has designated this rule not significant for purposes of E.O. 12866.

Details of the changes to the Schedule of Fee are as follows:

**Table 1: Changes to the Schedule of Fees**

Item No.	Proposed Fee	Current Fee	Change in Fee	Percentage Increase	Projected Annual Number of Applications \1\	Estimated Change in Annual Fees Collected \2\	Change in State Retained Fees	Change in Remittance to Treasury
<b>SCHEDULE OF FEES FOR CONSULAR SERVICES</b>								
*****								
<b>ADMINISTRATIVE SERVICES</b>								
<b>PPT *****</b>								
74. Return Check Processing Fee	\$0	\$25	(\$25)	(100%)	8,293	(\$207,325)	\$0	(\$207,325)

\1\ Based on estimated FY 2021 workload calculated with 8/1/2021 actual demand.

\2\ Using FY 2021 workload to generate collections. This will be a reduction in total annual remittance to Treasury.

### Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this regulation.

### Executive Order 13175

The Department has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirements of Executive Order 13175 do not apply to this rulemaking.

*Paperwork Reduction Act*

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

**List of Subjects in 22 CFR Part 22**

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

**PART 22 - SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT  
OF STATE AND FOREIGN SERVICE**

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10718, 22 FR 4632 (1957); Exec. Order 11295, 31 FR 10603 (1966).

2. Amend § 22.1 by

- a. Revising the introductory text; and
- b. In the table, removing and reserving entry 74.

The revision reads as follows:

**§ 22.1 Schedule of Fees**

The following table sets forth the fees for the following categories listed on the U.S. Department of State's Schedule of Fees for Consular Services:

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*Department of State.*

[FR Doc. 2022-06131 Filed: 3/23/2022 8:45 am; Publication Date: 3/24/2022]